

REMARKS

Status of Claims

Claims 41 and 45-47 are in the present application. Claims 1-3, 7, 10-14, 16, 18, and 27-28 are withdrawn pursuant to a restriction requirement. Claims 4-6, 8-9, 15, 17, 19-26, 29-40 and 42-44 are cancelled. Claim 41 is amended to present the claimed subject matter in a preferred form. No new matter is introduced.

Election/Restriction

The Examiner states that a “complete reply” to the final rejection must include cancellation of non-elected claims. However, Applicant has reserved the right to have the method claims re-instated upon allowance of the product claims, provided that the claims are amended to be of the same scope as the allowed product claims. Thus, it is appropriate for the claims to remain in a withdrawn status.

Claim Rejections - 35 USC §102

Claims 41 & 45-47 are rejected under 35 U.S.C. §102(a)/(e) as being unpatentable over Hutson et al., U.S. Pub. No. 2003/0105446 (“Hutson”). The rejection is respectfully traversed.

Hutson discloses a composite comprising an elastic layer sandwiched with two non-elastic nonwoven materials. Claim 41 is amended to recite that the laminate has only two layers – a nonwoven layer and a formed film layer. Nothing in Hutson would suggest to the skilled artisan to eliminate one of the fibrous nonwoven layers.

Hutson teaches activation stretching the composite to a point of breaking the fibers in the nonwoven web such that the elasticity of the laminate is substantially that of the film alone. Thus, by definition, Hutson teaches that the nonwoven web ceases to exist in the areas where it has broken from stretching. In this sense, and as noted in the Declaration of Rickey Seyler, Hutson, like the other prior art references, teaches effectively an elimination of the fibers in the broken areas.

Hutson clearly shows in Figure 1 that the broken fibers in the nonwoven are disposed in registration with the apertures. The Examiner states that Hutson does not require that the broken areas in the nonwoven be in registration with the apertures in the film. Applicants respectfully

submit that the Examiner has applied the wrong standard. The issue is what the reference teaches or suggests based on its disclosure. The only disclosure in Hutson that is relevant for the issue of the location of the breaks in the nonwoven and the apertures in the film is the illustration in Figure 1. Applicants have found no disclosure anywhere in Hutson to support the Examiner's position that alignment of the breaks with the apertures does not necessarily occur or that it is merely illustrative. Simply because Hutson does not explicitly require it does not allow the Examiner to simply assume it does not occur. Applicants know of no rule or customary practice that allows the Examiner to fashion a rejection based on what a reference does NOT explicitly require. If one exists, Applicants respectfully request that the Examiner provide a citation.

Moreover, Hutson uses an elastic film. Claim 41 is amended to recite that the film portion of the laminate/ composite is made of a select group of thermoplastic polymers which does not include elastomers. Nothing in Hutson discloses or suggests making the laminate out of nonelastic polymers. In addition, because the films in Hutson are elastomeric, they can survive the degree of activation needed to cause breakage in the nonwoven webs. A non-elastomeric film, such as ones made from the polymers recited in the claims, would be expected to break at about the same time as the nonwoven webs. It is noted in this regard that Hutson discloses elongations of 700-800%, which is well beyond the elongation that can be tolerated by a polyethylene or polypropylene film, for example.

The Examiner interprets the term "extensible" in the claims to mean any material that can be extended to some degree without immediately breaking, regardless of how small or minimal that amount of extension might be. The Examiner states that this is the "broadest reasonable meaning." Applicants are not aware of any material known in the world that cannot extend to some degree under sufficient tension before breaking. The degree of extension might only be a fraction of a percent, but under the Examiner's definition, materials like slate, concrete and steel would all be included. If fact, under the "reasonable" interpretation by the Examiner, no material that exists is excluded from the claims and the term is superfluous. Because all words in the claim are to be given meaning, the Examiner's interpretation is by definition not reasonable.

Moreover, the prior art has given meaning to the term "extensible" when referring to nonwoven webs. See e.g., US 5914084; US 2005/0095943; US 7829487; US 2007/0254545; US

2010/0124864; WO 1990/007602; WO 2003/078717; and WO 2007/140163, for example. None of these prior art references use the term “extensible” in the manner used by the Examiner.

Claims 45-47 are directly or indirectly dependent from claim 41. Thus, these claims are not *prima facie* obvious over Hutson.

Conclusion

For the reasons stated above, claims 41 and 45-47 define patentable subject matter and the references of record do not teach, disclose or suggest the composite recited therein.

Reconsideration and withdrawal of all claim objections and claim rejections is solicited, as is a notice of allowance with respect to the claims under prosecution.

Upon the indication of allowable subject matter, Applicant will seek to rejoin the withdrawn claims and amend those claims to conform in scope to the allowed claims.

Respectfully Solicited,



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